

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Broadcast Localism)	MB Docket No. 04-233
)	

**REPLY COMMENTS OF
THE ASSOCIATION OF PUBLIC TELEVISION STATIONS
AND THE PUBLIC BROADCASTING SERVICE**

The record compiled in this proceeding highlights the uniquely local service that stations qualified to receive funding from the Corporation for Public Broadcasting (CPB) (“Public Television Stations”) provide to their communities. To ensure that such stations’ local programming resources are not diverted to meet unnecessary regulatory burdens, the Association of Public Television Stations (“APTS”)¹ and the Public Broadcasting Service (“PBS”)² hereby submit reply comments in the Commission’s *Localism* proceeding.

I. THE RECORD CONFIRMS THAT PUBLIC TELEVISION STATIONS PROVIDE A DISTINCTLY LOCAL SERVICE.

In addition to APTS/PBS, parties including National Public Radio (“NPR”), Station Resource Group, National Federation of Community Broadcasters, Public Radio Capital, Colorado Public Television, Oregon Public Broadcasting, Georgia Public Telecommunications

¹ APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation’s CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

² PBS is a media enterprise that serves 355 public noncommercial television stations and reaches nearly 73 million people each week through on-air and online content. A trusted community resource, PBS uses the power of noncommercial television, the Internet and other media to enrich the lives of all Americans through quality programs and education services.

Commission (“Georgia Public Television”) and UNC-TV document the uniquely local role of public broadcasting. APTS and PBS also appreciate the recognition by the Public Interest Public Airwaves Coalition *et al.* (“PIPA Coalition”) of the need to distinguish in this proceeding between Public Television Stations and other broadcasters.³ As discussed below, in light of Public Television Stations’ inherent focus on local service, the Commission should not apply new localism rules to them.

First, the driving mission of Public Television Stations is not profit, but rather service to local communities. Each Public Television Station is a charitable, mission-focused, and *local* nonprofit institution. In the words of a group of Public Broadcasters filing initial comments, “The sole mission of these stations is to provide programming responsive to community needs.”⁴

Second, local Public Television Stations have a wholly local ownership structure.⁵ Thus, one of the principal justifications offered for new localism regulations — media consolidation — does not apply to Public Television Stations. Reflecting the consolidation-driven nature of this proceeding, one representative commenter notes: “Media consolidation has reduced localism and the diversity of voices in cities and towns across the country.”⁶ Indeed, the initial *Notice of Inquiry* in this proceeding arose from the proceeding concerning structural ownership rules,

³ Comments of the Public Interest Public Airwaves Coalition, Center for Creative Voices in Media, Free Press, and the National Hispanic Media Coalition at 2 (April 28, 2008) (“PIPA Coalition Comments”).

⁴ Joint Comments of Public Broadcasters at 3 (April 28, 2008).

⁵ See Comments of APTS and PBS at 5-6 (April 28, 2008) (“APTS/PBS Comments”), *citing Issues Related to the Structure and Funding of Public Television*, Government Accountability Office, GAO 07-150 (Jan. 2007), available at <http://www.gao.gov/new.items/d07150.pdf> (“GAO Report”).

⁶ Comment of Kelly Taylor (April 29, 2008).

which had no bearing on Public Television Stations.⁷ Public Television Stations are not run by some distant entity. They are local institutions, and there is accordingly no need to subject them to new rules that are designed to address any perceived consequences of consolidation.

Third, Public Television Stations are subject to significant oversight by entities other than the FCC. APTS and PBS thus agree with the Joint Public Broadcasters that “[p]ublic broadcasting is structurally designed to involve the community in its operations.”⁸ For example, as a condition of their grants from CPB, Public Television Stations must make meetings of their governing bodies open to the public. *See* 47 U.S.C. § 396(k)(4). Moreover, Public Television Stations that are licensed to a community organization or other non-governmental entity must maintain Community Advisory Boards that are separate from the stations’ governing bodies. *Id.* at § 396(k)(8). As CPB explains, “The purpose of the advisory board is to provide a vehicle for effective community input to the station’s governing body about station programming, community service and impact on the community from the station’s major policy decisions.”⁹

Fourth, Public Television Stations’ reliance on local financial support provides a strong accountability mechanism. As NPR explains with reference to public radio stations (which operate in a similar manner to Public Television Stations), “public radio stations are financially dependent on their listeners.”¹⁰ Individuals provide the largest source of contributions to Public Television Stations — 25 percent of all revenue, according to recent data.¹¹ As the Station

⁷ *Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, MB Docket No. 04-233, FCC 07-218, at ¶ 40 (rel. Jan. 24, 2008) (“*NPRM*”).

⁸ Joint Comments of Public Broadcasters at 8.

⁹ CPB, *Certification Requirements for Grant Recipients*, at 14, available at http://www.cpb.org/stations/certification/cpb_certification_req.pdf.

¹⁰ Comments of National Public Radio at 9 (April 28, 2008) (“*NPR Comments*”).

¹¹ GAO Report at 10.

Resource Group *et al.* explain, reliance on financial support from local households creates a “profound economic difference between commercial and [public] stations” which ensures that “they will provide their communities with significant alternative programming designed to satisfy the interests of the public not served by commercial broadcast stations.”¹²

Finally, and most importantly, the accountability mechanisms described above have produced a record of success. The Commission should take careful notice of the many examples of local programming documented by APTS, PBS, and other public broadcasters in initial comments. Programming such as Detroit Public Television’s *Bridging the Racial Divide*, Idaho Public Television’s *Legislative Live*, and UNC-TV’s *Legislative Week in Review* informs and educates local viewers on important electoral, political, and social matters. Moved by that commitment to service, Congressman Edward J. Markey, Chair of the House Subcommittee on Telecommunications and the Internet, has called the public broadcasting system the “crown jewel” of the nation’s media mix.¹³

In light of Public Television Stations’ impressive record of localism and uniquely local structure, the FCC has historically recognized that Public Television Stations should not be subject to the same rules as their commercial counterparts. Most notably, the renewal processing guidelines for non-entertainment programming, which the Commission proposes to “reintroduce” in this proceeding, *never* applied to Public Television Stations.¹⁴ Similarly, as

¹² Comments of Station Resource Group, National Federation of Community Broadcasters, and Public Radio Capital at 7 (April 28, 2008), *quoting Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees*, 98 FCC 2d 746, 751 ¶ 13 (1984).

¹³ See Address of Rep. Edward J. Markey to APTS Conference, Feb. 13, 2007, *available at* <http://www.aptis.org/upload/Ed%20Markey%20Speech%20at%20CHD%202007.doc>

¹⁴ *NPRM* at ¶ 124 (“We tentatively conclude that we should reintroduce specific procedural guidelines for the processing of renewal applications for stations based on their localism performance”).

NPR explains, among other regulations public broadcasters are exempt from (1) all regulatory and application filing fees, (2) the auctioning of spectrum to resolve mutually exclusive applications, (3) political program requirements, including “reasonable access” requirements, and (4) children’s television reporting requirements.¹⁵ By providing these exemptions, the Commission has properly treated Public Television Stations in a different manner from other broadcasters.

II. THE PROPOSED REGULATIONS WOULD DIVERT RESOURCES OF PUBLIC TELEVISION STATIONS AWAY FROM LOCAL PROGRAMMING AND SERVICES.

The localism regulations proposed in this proceeding are not only unnecessary as applied to public broadcasters; they would divert resources that are otherwise deployed to provide responsive programming and services to local viewers. NPR warns that “[t]he likely consequence [of the proposed regulations] will be less public service, not more, as stations seek to minimize the burdens by reducing station operations” and other activities to defray regulatory compliance costs.¹⁶ To prevent such harms, APTS and PBS urge the Commission to exercise restraint and forbear from applying new localism regulations to Public Television Stations.

A. Program Processing Guidelines, Including for Electoral Affairs Programming, Would Inappropriately Constrain Local Television Stations from Serving the Needs of Local Viewers.

As noted above, the programming requirements of the 1960s and ’70s-era renewal application processing guidelines — which the Commission proposes to “reintroduce” in this proceeding — have never applied to Public Television Stations. The Commission should not, in 2008, break with precedent and extend such programming guidelines to Public Television Stations. Programming guidelines threaten to substitute the judgment of regulators for that of the

¹⁵ See Comments of NPR at 32 (citations omitted).

¹⁶ *Id.*

local viewers and community representatives who today inform Public Television Stations' programming decisions. APTS and PBS agree with UNC-TV that programming guidelines would "displace local interests, standards, and controls that have been developed over time" by Public Television Stations.¹⁷

In particular, the Commission should not require Public Television Stations to air a specific amount of local electoral affairs in order to receive Bureau-level processing of renewal applications. Such a requirement would turn a Public Television Station into an electoral news outlet even if the station determines that its local programming resources could better serve the community's needs through coverage of a different topic. Congress has already made clear that Public Television Stations should not be forced to air electoral speech; in 2000, it formally exempted Public Television Stations from the requirement to provide "reasonable access" to federal candidates, and directed that "the Federal Communications Commission shall take no action against any non-commercial educational broadcast station which declines to carry a political advertisement."¹⁸ The Commission should not take any action to undermine that recent directive of Congress.

Likewise, any requirement that stations air a minimum number of Public Service Announcements ("PSAs") to receive Bureau-level processing would have a disparate impact on Public Television Stations. The PIPA Coalition proposes that one percent of all program time be devoted to PSAs.¹⁹ APTS and PBS do not address the relative merits of applying that

¹⁷ Comments of UNC-TV at 3 (April 28, 2008).

¹⁸ See Pub.L. 106-554, §1(a)(4) (2000) (amending 47 U.S.C. § 312(a)(7)).

¹⁹ See PIPA Coalition Comments at 3 (advocating a new regulation whereby a station's renewal application would be ineligible for Bureau-level processing unless it "[d]evote[s] at least 1 percent of total air time to unpaid [PSAs] on the most-watched channel" and 1 percent of total time multicast, regardless of the channel).

requirement to commercial broadcast stations, but in no event should Public Television Stations be evaluated under that standard. While the typical hour-long program on a commercial station is only 40 to 45 minutes long, the standard length of an hour-long program accepted by PBS for distribution is 56 minutes, 48 seconds; for children's programming, the standard length is 58 minutes, 46 seconds.²⁰ With such limited non-program time available, a mandate to devote one percent of broadcast time to PSAs would unfairly burden Public Television Stations.

B. The Proposed Revisions to the Main Studio and Remote Operation Rules Would Particularly Harm State Networks.

There is a chorus of opposition to reinstatement of the pre-1987 main studio rule or prohibition of remote-station operation.²¹ APTS and PBS are not aware of a single party filing in support of those proposals. Without reiterating each individual filer's opposition, APTS and PBS wish to bring to the Commission's attention the particular burden that such rules would impose on Public Television Stations, especially those which operate as part of a state network.

State networks generally operate multiple broadcast transmitters as integrated systems, simulcasting a statewide public broadcasting service to all households in the state. Each state network "links citizens all across the state to each other to form a single, cohesive public television broadcast community."²² The Commission has recognized the benefits of state networks, proclaiming, "State-wide networks have been pioneers in NCE broadcasting,

²⁰ See PBS Red Book — Guide to Program Packaging and Delivery for PBS, *available at* http://www.pbs.org/producers/redbook/specs/format_and_packaging.html.

²¹ See, e.g., Comments of Prometheus Radio Project at 3 ("[A]s it stands, the Commission's proposed rule would force many stations to go off the air during non-peak hours"); NPR Comments at 26-31; Comments of the National Association of Broadcasters at 45-70; Comments of the Named State Broadcasters Associations at 5-14; Comments of College Broadcasters, Inc. at 13-16; Comments of National Religious Broadcasters at 8-9.

²² *University of North Carolina*, 23 FCC Rcd 1205, 1206 (2008).

particularly in television, ensuring that educational programming is available throughout an area in a coordinated and organized manner, especially to schools.”²³

State-network operators including UNC-TV, Georgia Public Broadcasting, and Oregon Public Broadcasting attest to the importance of the current regulatory structure to their operations. As UNC-TV explains with respect to the Commission’s relatively flexible main studio rule and associated waiver policy, “The efficiencies realized by not having to maintain separate studios at each transmitter site have allowed UNC-TV to produce over 400 hours of local programming for and about North Carolina in the past year alone.”²⁴ Similarly, the Commission’s decision in 1995 to permit remote operation of broadcast transmitters enabled state networks to expand to rural areas that would otherwise be without local broadcast service. As Oregon Public Broadcasting comments, remote operation has “given OPB the ability to serve the rural and remote communities of Oregon.”²⁵ By centralizing operations, state networks “realize significant cost savings . . . to provide quality public television programming” to the entire population of a state.²⁶

Were the Commission to reverse course on its main studio and remote operation regulations, it would severely undercut service by state networks and other Public Television Stations. Based on a survey of stations by APTS, it is estimated that stations required to relocate their main studio to the community of license would face minimum initial costs of at least

²³ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 16 FCC Rcd 5074, 5095 ¶ 59 (2000).

²⁴ UNC-TV Comments at 4-5.

²⁵ Letter from Steven M. Bass, President, OPB to the Hon. Deborah Taylor Tate at 1 (April 21, 2008).

²⁶ *University of North Carolina*, 23 FCC Rcd at 1206. The recognized benefits of centralized operation for statewide networks contradict the claim of Prometheus Radio Project, which argues in the abstract that main studio waivers are given “too liberally” to noncommercial stations. *See* Comments of Prometheus Radio Project at 5 (April 28, 2008).

\$1,000,000, plus \$300,000 in annually recurring costs. Costs of complying with a ban on remote operation would typically range from \$600,000 to \$1,500,000. These costs will most endanger service to viewers in the hard-to-reach, remote areas to which service was expanded under the current regulatory structure.

To the extent that a state network is able to maintain service to remote areas despite the new regulatory costs, the quality of the programming service throughout the state may decline. For example, Georgia Public Broadcasting explains that the new regulatory burdens would “impair[] its ability to devote its limited resources to providing interesting and innovative programming to residents throughout the state of Georgia.”²⁷ To avoid that harm to the public interest, APTS and PBS urge the Commission to maintain the existing approaches to main studios and remote operation.

²⁷ Comments of Georgia Public Broadcasting at 7-8.

CONCLUSION

The record in this proceeding is clear: The local ownership structure and existing accountability mechanisms for Public Television Stations already ensure that such stations serve the needs of local communities. Additional localism regulation on Public Television Stations would harm, not serve, the Commission's goals in this proceeding. Accordingly, the Association of Public Television Stations and the Public Broadcasting Service respectfully request that the Commission forbear from applying new localism regulations on Public Television Stations.

Respectfully submitted,

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